PACIFIC BANK BHD.

v.

CHONG WAI HIONG

HIGH COURT MALAYA, KUALA LUMPUR
ANUAR ZAINAL ABIDIN J
[CIVIL SUIT NO. D4-23-205-88]
6 APRIL 1989

CONTRACT: *Overdraft facility - Defendant denied entered into agreement - Whether letter of offer which was acknowledged constituted an agreement - Whether provision for additional interest in letter of offer binding upon defendant.*

Two appeals by the plaintiff and defendant respectively against the learned Senior Assistant Registrar's decision. Plaintiff appeals against the SAR's decision in not awarding additional interest. The defendant appeals against the SAR's decision in allowing the plaintiff to enter final judgment against the defendant.

Plaintiff's claim against the defendant is pursuant to an overdraft facility granted to the defendant *vide* a letter of offer dated 3 April 1985. Plaintiff's contention is that the defendant failed to conduct the facility regularly and as a result had overdrawn against the limit. Despite a letter of demand, defendant failed to make payment. Defendant in his defence denied there was an agreement between plaintiff and himself therefore he was not obliged to comply with any demand.

Held:

[1] Defendant cannot deny having entered into an agreement with the plaintiff because the letter of offer dated 3 April 1985 was acknowledged and accepted by the defendant without reservation.

[2] Additional charge of interest is one of the terms and conditions set out in the letter of offer. The terms and conditions are contractual, and therefore binding upon the parties.

[Plaintiff's appeal allowed. Defendant's appeal dismissed with costs.]

For the defendant/appellant - Mohd. Nasrim bin Datuk Mohd. Salleh; M/s. Yip Yeo & Nasrim
For the plaintiff/respondent - P.J. Ganapathy; M/s. Rashid & Lee

JUDGMENT

Anuar Zainal Abidin J:

These two appeals by the plaintiff and the defendant respectively are against the decision of the learned Senior Assistant Registrar given on 18 October 1988.

The plaintiff appeals (encl. 14) against the decision of the learned Senior Assistant Registrar in not awarding additional interest of 1% per annum on the excess sum of RM24,986.68 from 9 January 1988 until realisation.

The defendant appeals (encl. 15) against the decision of the learned Senior Assistant Registrar ordering that the plaintiff be at liberty to enter final judgment against the defendant for the sum of RM274,986.68 together with interest thereon at the rate of 11.5% per annum from 1 November 1987 until realisation.

The plaintiff's claim against the defendant is for a sum of RM274,986.68 being outstanding sum under an overdraft facility granted by the plaintiff to the defendant *vide* a letter of offer dated 3 April 1985.

The plaintiff's contention is that the defendant failed to conduct the facility regularly and properly and as the defendant had overdrawn against the limit of RM250,000 and that the account stood at RM274,968.68 as at 31 October 1987.

The plaintiff caused letters of demand to be sent to the defendant demanding the outstanding sum. However the defendant failed to make any payment towards the sum owing to the plaintiff.

The defendant in his defence denied that there was an agreement between the plaintiff and himself in respect of the overdraft facility. As such he is not obliged to comply with any demand made by the plaintiff.

Obviously the defence is a sham defence. I do not think the defendant can deny that he had entered into an agreement with the plaintiff. The letter of offer dated 3 April 1985 was acknowledged and accepted by the defendant without reservation (encl. 9 "AL1"). The terms and conditions of the overdraft facility are clearly set out in the letter. These terms and conditions, which include additional charge of interest on any excess balance, are contractual [*sic*] and therefore binding upon the parties.

The defence of the defendant to my mind is only an attempt to delay the plaintiff's right to judgment.

In my view the plaintiff is entitled to the judgment as prayed in the application under O. 14 of Rules of the High Court.

As I have stated earlier the interest charged is agreed upon by the parties and the plaintiff is right in imposing such interest.

For the reasons above I would allow the plaintiff's appeal (encl. 14) and I would dismiss the defendant's appeal (encl. 15) with costs.

Also found at [1989] 2 CLJ 509